

General Information Letter: IITA Section 405 permits the carryforward of a credit in circumstances where IRC Section 381 would permit the carryforward of a credit.

March 21, 2000

Dear:

This is in response to your facsimile dated February 23, 2000 in which you state the following:

Can existing state tax credits for our corporation be transferred through either a stock or asset acquisition to the acquiring corp. (it would appear that 381(c) asset acquisition would allow credits to be transferred).

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill. Adm. Code §1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Pursuant to the recently enacted Public Act 91-541, there is now a new section in the Illinois Income Tax Act ("IITA") that discusses carryovers in certain acquisitions. 35 ILCS 5/405. Enclosed please find a copy of the relevant pages of the aforementioned Public Act 91-541. Assuming that the asset acquisition meets the requirements of Section 381(a) of the Internal Revenue Code, existing state tax credits from the corporation being acquired may be transferred to the acquiring corporation. Should you have any further questions regarding the new IITA Section 405, please let me know.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Heidi Scott  
Staff Attorney -- Income Tax